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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

LIZETTE PADILLA-LEE et al., Plaintiffs and Appellants, v. CITY OF SANTA BARBARA et al., Defendant, Cross-complainant and Respondent; RICHARD MESTER et al., Defendants, Cross-defendants and Respondents.	2d Civ. No. B282959 (Super. Ct. No. 1486999) (Santa Barbara County)
LIZETTE PADILLA-LEE et al., Plaintiffs and Appellants, v. CITY OF SANTA BARBARA et al., Defendants and Respondents.	2d Civ. No. B282959 (Super. Ct. No. 15CV04680) (Santa Barbara County)

Lizette Padilla-Lee was crossing an intersection while pushing her infant daughter in a stroller. While in the intersection, she was struck by a pickup truck driven by Debbie Lux. Padilla-Lee, Timothy Lee, and their daughter, Lauren Lee, sued Richard and Beverly Mester (the Mesters) and the City of Santa Barbara (City) for premises liability and dangerous condition of public property. Padilla-Lee and her daughter (the Lees) appeal from judgment after orders granting motions for summary judgment in favor of the Mesters and the City.[1] We affirm.

Undisputed evidence establishes that the condition of the City's roadway and visual obstructions on the Mesters' property near the intersection did not prevent Lux from seeing the pedestrians who were straight ahead of her in the crossing area.

We conclude the undisputed evidence does not support the opinions of the Lees' experts. They opined that conditions to Lux's right would have distracted her, caused her to accelerate at an unusually high speed through the intersection to cross southbound traffic, or would have otherwise contributed to the collision.

FACTUAL AND PROCEDURAL BACKGROUND

The Intersection and Collision

The collision occurred at the intersection of Arrellaga and De La Vina streets in Santa Barbara. De La Vina is a one-way southbound street, with two lanes of traffic and no stop signs at the intersection. Lux was crossing De La Vina by traveling westbound on Arrellaga. Arrellaga is a two-way street with a stop sign. When Lux reached the intersection, she stopped at the

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[1] We granted Timothy Lee's request to dismiss his appeal on October 15, 2018.

stop sign and checked to her right for southbound De La Vina traffic before crossing.

Padilla-Lee entered the crossing area directly in front of Lux on the other side of De La Vina. Padilla-Lee was crossing Arrellaga, northbound on De La Vina. It was rush hour in December, dark, and rainy.

Lux lived nearby and had driven through the intersection "hundreds" of times. She testified that she did not see Padilla-Lee until it was too late to avoid her. The Lees' complaint alleges that both mother and daughter were seriously injured and Timothy Lee suffered loss of consortium.

The Mesters own an apartment building on the northeast corner of Arrellaga and De La Vina streets. The Lees allege that overgrown vegetation and other conditions on the Mesters' property restricted Lux's view of southbound De La Vina traffic. They allege that the City had notice of the dangerous condition of the intersection because of prior collisions. They allege this condition restricted sightlines and did not provide sufficient stopping distance for high speeds of traffic on De La Vina. In addition, the absence of a traffic signal or stop sign, among other things, combined to bring about the collision.

The Pleadings

The Lees initially sued Lux for negligence. (*Padilla-Lee et al. v. Lux* (Super. Ct. Santa Barbara County, 2015, No. 1486999.) The Lees later sued the Mesters for premises liability and the City for dangerous condition of public property. (*Padilla-Lee et al. v. City of Santa Barbara et al.* (Super. Ct. Santa Barbara

County, 2015, No. 15CV04680.)[2] The trial court consolidated the cases.

The Motions

The City and the Mesters each moved for summary judgment on the grounds that the conditions of their property were not a cause of the collision. The City also asserted that the Lees' claims are barred by design and traffic device immunity.

The trial court granted both motions for the same reason. It found that there is no triable issue of material fact as to causation. It decided that the Lees offered evidence that restricted sightlines made "the intersection [] dangerous in the abstract," but that they did not offer evidence to support a conclusion that those dangers caused the collision. The court did not decide the City's design and traffic device immunity defenses.

The Moving Defendants' Evidence

In support of their motions, the Mesters and the City offered the testimony of Lux that, although she initially had to inch forward to get a clear view of De La Vina southbound traffic, her view was clear for one block before she crossed De La Vina. Lux said there was "traffic on the street, but well enough back that [she] could proceed safely into the intersection." She could see traffic was "still up by the next block." It was "towards Valerio, either just crossing Valerio or, like, at Valerio and just heading down. So almost a full block away." She "saw those vehicles before [she] proceeded into the intersection to cross over Lane Number 1 of southbound De La Vina."

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[2] The Lees also asserted a general negligence cause of action against the City, but expressly abandon it in their opening brief.

The Mesters and the City also offered Lux's recorded statement at the scene in which she gave a similar account, and the testimony of the officer who took that statement. Lux did not say restricted sightlines or southbound traffic played a role in the collision. At the scene, she told the officer, "I had been stopped at the stop sign over there. I looked this way. I didn't see anybody. I looked up to see about traffic coming. And I didn't see anybody. I mean, there were cars coming, but they were farther back . . . . And then I proceeded across."

Lux told the officer the "A pillar" of her truck may have blocked her view of the pedestrians: "I don't know how I could have not seen them. . . . I mean, I've had trouble with this truck before where people are like in the A pillar and blocked . . . . And then all of a sudden they're like in front of me. And so . . . I did not see them at all." At deposition, Lux did not recall telling the officer about the A pillar, but she did not contradict the statement. She testified, "I know where the blind spots are in my vehicle, and so I drive in a way that's aware of those."

The Mesters and the City also offered the testimony of Alan Lopez, a driver who was directly behind Lux at the intersection. He said he had no difficulty seeing that Padilla-Lee was crossing in front of them. He could see her with the stroller before Lux entered the intersection, while he was still the third car in line, "before [Lux's] pickup even got to the stop sign."

Lopez said that Padilla-Lee waited on the sidewalk while the car in front of Lux crossed, and then she entered the crosswalk area. "I could even see that [Padilla-Lee] gave . . . time for this [first] car to go through before she started crossing." As Lux drove through the intersection, Lopez saw Padilla-Lee run, pushing the stroller to get out of the way.

The Mesters offered the declaration of a mechanical engineer, Alvin Lowi III, who inspected the intersection and opined, "There was nothing about [the Mesters'] property located at the northeast corner which prevented Ms. Lux from seeing the pedestrians at any time from their position on the southwest corner or during their northerly movement from that location up to the time of impact."

In their opposition, the Lees moved to strike Lowi's declaration, or continue the hearing, because the Mesters refused to produce him for deposition. The trial court denied the request because the Lees had not tried to compel the deposition. Nor had they shown a need to explore any significant question relating to the foundation of his opinion.

The City offered the declaration of a mechanical engineer, Thomas Fugger, who concluded there was nothing about the intersection that prevented Lux from seeing the pedestrians at any time and no evidence that the roadway was a cause of the collision.

The City also offered the declaration of its traffic engineer, Derrick Bailey, that the intersection's design was reasonable and complied with all applicable state and federal regulations. Bailey declared that the sight distance for a westbound motorist at the Arrellaga intersection was 336 feet up De La Vina to the right, 50 feet more than standards require.

In support of its design immunity claim, the City offered evidence of approved plans from 1914 and 1921 for De La Vina and Arrellaga streets, when De La Vina was a two-way street. It offered evidence of a 1957 City ordinance that changed De La Vina from a two-way to a one-way northbound street, and evidence of a 1958 City ordinance that changed it to its current

one-way southbound configuration. The City also offered a 1959 ordinance that authorized the City traffic engineer to place traffic control devices as required by law.

The Lees' Evidence

In opposition to the Mesters' and the City's motions for summary judgment, the Lees offered Lux's testimony that when Lux first stopped at the intersection, she could not see up De La Vina street "very much at all. . . . [Y]ou have to start to proceed forward to be able to see traffic." Lux testified, "[S]peak[ing] to my general knowledge of that corner . . . with that intersection there [are] hedges and shrubs, and then there [are] parked cars as well. So you have to pull up to be able to get past those things to be able to see oncoming traffic." She said the hedges and shrubs are on the "northeast corner," i.e., the Mesters' property. Lux testified that, as she entered the intersection, "I was looking right to judge the traffic. And then once I made the decision that they were far enough back and it was safe for me to cross, my vision would then go forward and . . . . [w]hen I focused my vision back in front of me, I was halfway across the intersection. I saw [Padilla-Lee]. I applied my brakes and swerved."

The Lees also offered Lopez's testimony that Lopez saw Lux "stopping, advancing, stopping and advancing little by little." Lopez said Lux's head was turned to the right. He testified that on another occasion, when he was walking across the same intersection with his son, a westbound car "stopped right in front of [them] almost about to run [them] over."

The Lees offered a warning letter from the City to the Mesters, sent after the collision, which states, "The City recently installed a new traffic signal light at the intersection next to your property and it has come to our attention that some of the

vegetation from your property is encroaching onto the . . . sidewalk. [¶] The vegetation . . . is an obstruction to pedestrians traveling on the sidewalk and is an obstruction for vehicle drivers to see the warning signs that have just been installed." The letter gave the Mesters 15 days to remedy the problem.

The Lees offered testimony of other residents about the intersection. Aaron Solis testified that "[t]he bushes would kind of be in your way, so you creep out a little bit to make sure the intersection is clear." He said he "never actually witnessed" an accident, but "would hear a collision," and go outside and "neighbors [were] always talking about the bush on the corner." He said he is a "pretty good driver. So [he] never had an issue with it." He said the accidents involved vehicles that were on De La Vina. David Almeida said vehicles creep forward to try to see De La Vina traffic. Robert Carr said, "[T]he apartment building on the right-hand side had a hedge that hung over the wall. And it made it hard for people to see up De La Vina Street." He said, "[E]very few months, maybe once a year, we'd have a few accidents in a row."

The Lees offered testimony about crash history data (but not the underlying data and reports). The City's traffic engineer testified that he prepared crash reports that ranked the intersection number one in the City for angle crash collisions in 2010, with six collisions; number two in the 2008 to 2010 period, with nine collisions; and number one in 2013. He said the City was awarded a grant to install a traffic signal at the intersection before the accident. The City requested the grant to "address broadside crashes."

The Lees' traffic engineer, Richard K. Haygood, declared that the corner sightlines at the intersection were 118 feet, less

than half of the 385 feet required by standards set by Caltrans and the American Association of State Highway and Transportation Officials (AASHTO). Haygood questioned Bailey's measurements and his conclusion that the sight distance exceeded standards. Haygood declared that, based on his review of reports, the City identified the intersection as number one for "having the most accidents in the city"; for crashes resulting in injuries or fatalities"; and "for pedestrian involved collisions in the city" in 2013, the year of this collision. He declared the accident rate at the intersection was between 6 and 13 times higher than state averages in the year before the collision.

Haygood declared there were 30 collisions at the intersection in the seven years before the collision that could have been prevented by an all-way stop or traffic signal and that 19 of those involved westbound traffic, based on his review of the City's traffic collision reports and summaries. He declared the "vast majority . . . involv[ed] vehicles on Arrellaga crossing De La Vina." He did not declare whether these were broadside collisions with southbound vehicles or collisions with obstacles directly ahead of the westbound motorists.

To establish causation, the Lees offered the opinions of two experts: Zachary Moore (a mechanical engineer) and Jason Droll, Ph.D. (a human factors expert). Both inspected the intersection and reviewed relevant materials.

Moore opined that overgrown vegetation and a handrail on the Mesters' property violated applicable law, obstructed the view of southbound traffic, and were a substantial factor in bringing about the collision. He declared that the attention of "westbound motorists . . . must be directed away from potential hazards in front of them" while they look to the right to see southbound

traffic. He opined that the intersection is dangerous because (1) "southbound motorists may turn left from the near lane of travel," bringing them close to the curb that westbound motorists must first cross; (2) "westbound motorists' concentration must be focused to the right"; (3) "motorists are in motion westbound while perceiving and reacting to hazards coming from their right" so they "lack the time to perceive and react to hazards in front of them" until they "have fully addressed hazards to the right"; (4) inching forward to gain visibility "may miscommunicate to pedestrians . . . that they are safe to cross"; and (5) the sight restrictions "can result in Arrellaga drivers accelerating faster in order to attempt to clear the intersection in the limited window."

Droll did not offer an opinion about the cause of this specific collision, but he opined about dangers posed by the intersection. Generally he offered various calculations and opined that westbound drivers' sightlines do not allow them to sufficiently clear the path of southbound De La Vina traffic, and, as a result, they "may . . . [i]ncrease their acceleration" or "move further west" into the intersection to see. If they "accelerate faster than typical," this "may increase conflicts with pedestrians" due to insufficient stopping distances. If they "consider" moving "forward [west] to increase their sightline distance," they "may be constrained" by exposure to southbound lanes of traffic and the need to leave room for southbound vehicles to turn left. Droll declared that moving forward to increase sightlines may "convey[] yielding behavior to the pedestrian" who, "[b]elieving [they] have been granted the right-of-way by the westbound driver, . . . may enter the crosswalk when, in fact, the driver is still occupied with assessing their

sightline to southbound vehicles, and potentially preparing to accelerate at a faster than typical rate."

The Ruling

The trial court granted both defense motions. It found that the Lees presented substantial evidence that the intersection may have been dangerous at the time of the collision, but did not present substantial evidence that its condition, or the condition of the Mesters' property, was a cause of the collision.

The trial judge explained at the hearing, "[T]he way the Court saw it is that [Lux's] failure to properly direct her attention forward at the point when she was -- after she made the decision, saw that it was clear enough to cross, her attention should have been directed forward. . . . [I]t is manifestly clear that although there may have been defects present in the surroundings, they were not a substantial factor in the occurrence of the event."

The trial court acknowledged Droll's opinion that obstructed sightlines may force westbound drivers to accelerate, reducing their stopping time, but observed there was "no evidence presented that the posited fast acceleration occurred."

The trial court overruled the Lees' objections to Lowi's and Bailey's declarations. It refused to strike Lowi's declaration or continue the hearing. It observed, "[T]he plaintiffs noticed the deposition of Lowi and the Mester defendants objected, but there was no follow up motion to compel. Under the circumstances, exclusion of the expert testimony in [a] declaration as a sanction for Lowi's failing to appear for deposition is inappropriate."

DISCUSSION

A. The Mesters' Motion for Summary Judgment

The Lees contend (1) the trial court should have disregarded Lowi's declaration, or continued the hearing on the

Mesters' motion, because the Mesters did not make Lowi available for deposition; and (2) there is a triable issue of fact whether the Mesters' negligence was a cause of the collision.

We review the denial of motions for summary judgment de novo. (*Wiener v. Southcoast Childcare Ctrs., Inc.* (2004) 32 Cal.4th 1138, 1142.) We review denials of motions to continue (*Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 716) and rulings on evidentiary objections for abuse of discretion. (*Alexander v. Codemasters Group Limited* (2002) 104 Cal.App.4th 129, 140, fn. 3; *Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 192, fn. 15.)

1. Lowi's Declaration in Support of the Mesters' Motion

As the moving party, the Mesters had the initial burden to make a prima facie showing that there are no triable issues of fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) They relied in part on Lowi's declaration. Ordinarily, expert depositions are not taken until after the exchange of expert information. (Code Civ. Proc., §§ 2034.210, 2034.410.) But "where a party presents evidence that raises a significant question relating to the foundation of an expert's opinion filed in support of or in opposition to a motion for summary judgment or summary adjudication, a deposition limited to that subject should be allowed." (*St. Mary Medical Center v. Superior Court* (1996) 50 Cal.App.4th 1531, 1534.) Whether to compel such a deposition falls within the sound discretion of the trial court. (*Id.* at p. 1540.)

The Lees did not raise any significant questions about the foundation for Lowi's straightforward opinion that Lux had a clear view of the pedestrian in front of her, and they did not avail themselves of available procedures to compel the deposition in

the two months between the Mesters' refusal to produce Lowi and the hearing. The Lees noticed Lowi's deposition about one month after they received the Mesters' motion. The Mesters' counsel initially cooperated with scheduling, but eventually served a written objection refusing to produce Lowi, "unless, and until, Plaintiffs provide objective facts which create a significant question regarding the foundation of Mr. Lowi's declaration." Meet and confer efforts did not succeed, and the Mesters' counsel confirmed by e-mail that the deposition "will not go forward." The motions for summary judgment were heard two months later. In the interim, the trial court twice granted the Lees' requests to continue the hearing to conduct other discovery.

In opposition to the motion, the Lees asked the trial court to strike Lowi's declaration or continue the hearing, so they could ask Lowi whether he considered that the restricted sightlines may have diverted Lux's attention and forced her to accelerate. But Lowi did not offer any opinion about that, as the Lees acknowledge. ("Mr. Lowi has no foundation - or even any opinion - on those theories.") Similarly, the Lees wanted to ask Lowi if he had seen the City's warning letter, eyewitness depositions, and the crash history. But Lowi offers no opinion whether the intersection is dangerous. The trial court did not abuse its discretion when it refused to strike Lowi's declaration or continue the hearing.

The Lees were not entitled to a continuance pursuant to Code of Civil Procedure section 437c, subdivision (h) because they did not demonstrate that "facts essential to justify opposition may exist but cannot, for reasons stated, be presented." (*Ibid.*) This case is unlike *St. Mary Medical Center v. Superior Court*, *supra*, 50 Cal.App.4th 1531, 1534, in which a trial court should

have granted the defendants' motion to compel the deposition of a plaintiff's expert whose declaration in opposition to a summary judgment motion raised significant foundational questions. The *St. Mary Medical Center* court cautioned that "[t]here must be objective facts presented which create a significant question regarding the validity of the affidavit or declaration which, if successfully pursued, will impeach the foundational basis of the affidavit or declaration in question." (*Id.* at pp. 1540-1541.) The Lees raise no such questions here.

A trial court should grant a continuance when critical testimony cannot be presented despite prompt action. (*Dee v. Vintage Petroleum, Inc.* (2003) 106 Cal.App.4th 30, 34-35.) But that is not the case here.

The trial court did not abuse its discretion when it overruled the Lees' objection that Lowi's declaration lacked reasoning and was conclusory. Lowi reasoned that obstructions to Lux's right did not obstruct her view of the pedestrians who were immediately in front of her. As the court observed, the reasoning is "elementary," but sufficient to be admissible.

The Lees point out that a motion for summary judgment can only be supported by evidence that would be admissible at trial (*Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 541), that testimony of a witness who refuses to submit to cross-examination should be excluded (*Fost v. Superior Court* (2000) 80 Cal.App.4th 724, 735), and that the right to confrontation extends to any stage where witnesses are questioned. (*Stevenson v. Superior Court* (1979) 91 Cal.App.3d 925, 930.) None of these principles come into play because the Lees did not avail themselves of procedures to compel Lowi's deposition. The federal trial court decisions, upon which the Lees rely, do not

control and are unpersuasive. (*Cox v. Commonwealth Oil Co.* (S.D.Tex. 1962) 31 F.R.D. 583, 584 [order granting application to depose declarant expert]; *Sims v. Metro. Life Ins. Co.* (N.D.Cal. 2006) 2006 LEXIS 100677) [order denying motion for protective order regarding expert deposition]; *Chappell by Savage v. Bradley* (N.D.Ill. 1993) 834 F.Supp. 1030, 1033 [order striking declarations of experts who were not disclosed in the expert exchange under Fed. Rules Civ.Proc., rule 26(b)(4)].)

2. Causation Evidence Against the Mesters

The Mesters met their initial burden to present evidence that the condition of their property was not a cause of the accident when they submitted Lux's deposition and Lowi's declaration. Thus, the burden shifted to the Lees to show the existence of a triable issue of fact. (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th 826, 850.)

For purposes of their motion, the Mesters did not dispute that they negligently maintained the vegetation on the property. A landowner may be liable for injury to another on an adjacent street if the injury is caused by vegetation growing from the property and obstructing traffic. (*Swanberg v. O'Mectin* (1984) 157 Cal.App.3d 325, 330.) Santa Barbara City ordinances prohibit a property owner from allowing vegetation to obscure traffic or obstruct sightlines that are required for safe vehicle operation. (Santa Barbara Mun. Code, §§ 8.20.070, 8.20.080, 28.87.170, § D.4.)

But the Lees did not meet their burden to show that any obstruction on the Mesters' property was a substantial factor in bringing about their injuries. (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205.) Causation is a "factual question[] for the jury to decide except in cases in which the facts as to causation

are undisputed." (*Ibid.*) And a plaintiff need not prove the defendant's conduct was the sole cause. (*Yanez v. Plummer* (2013) 221 Cal.App.4th 180, 187.) But as the trial court concluded, "[W]hatever visual obstruction existed on the Mesters' Property, those obstructions did not obscure or otherwise prevent Lux from seeing the pedestrians."

To prove causation, the Lees relied primarily on their experts. The experts opined that westbound motorists on Arrellaga cannot see far enough up De La Vina to safely proceed across the intersection, so (1) they "must" focus to the right; (2) they "are in motion westbound while perceiving and reacting to hazards coming from their right"; (3) they lack "time to perceive and react to hazards in front of them"; and (4) the sight restrictions "can result in Arrellaga drivers accelerating faster in order to attempt to clear the intersection in the limited window." Further, the experts opine, their inching behavior "may miscommunicate to pedestrians . . . that they are safe to cross."

But none of this conjecture was supported by the undisputed evidence of how the accident occurred. Lux's undisputed testimony was that once she inched into the intersection and cleared the sightlines, she could see a block up De La Vina, there was no traffic coming, she had time to safely cross, and she was not in a hurry. Her view of the pedestrians in front of her was unobstructed at all times, as established by Lopez's undisputed testimony who was in a car behind her. Lopez said he saw Lux inch into the intersection, but there was no evidence that Padilla-Lee was confused by this or even noticed it. There was evidence of prior collisions at the intersection, but no evidence that the collisions were similar. The evidence suggests these were mainly broadside collisions with southbound

traffic. Lopez testified that a westbound car almost hit him and his son in the crosswalk, but there is no evidence this was due to sight restrictions rather than inattention or other factors. Neighbors testified they had difficulty seeing southbound traffic when crossing De La Vina westbound, but did not testify they had difficulty seeing or avoiding hazards directly ahead.

An expert's opinion based on assumptions of fact without evidentiary support has no evidentiary value. (*Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1117.) Proof of causation may be by direct or circumstantial evidence, but it must be by substantial evidence. Evidence that leaves the determination of these essential facts in the realm of mere speculation and conjecture is insufficient. (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 484 [an expert's opinion that a broken security gate was a substantial factor in bringing about a rape could not defeat summary judgment without any evidence that the rapist entered through the gate].)

To support an inference that Lux "engaged in excessive acceleration," the Lees offer Lux's testimony that her foot was on "the throttle." Read in context, it cannot support the inference. Counsel asked Lux, "[Y]our specific recollection is looking up De La Vina, seeing them up north of you. It was your judgment that you had enough time to clear the intersection, clear through that box that we drew, and you proceeded to move forward; correct?" Lux answered, "Yes." She said she was "centered within the intersection" when she first saw Padilla-Lee in front of her. Counsel asked, "At that point, do you have your foot on the accelerator, on the brake, or is it off the pedals? Before the point of seeing her[?]" Lux answered, "My foot would be on the

throttle." That Lux's foot was on the gas pedal as she proceeded does not support an inference that she was driving fast.

Lux testified that the highest speed she achieved through the intersection was 10 miles per hour. She told the responding officer she "felt she had enough time, so she was just moving through the intersection before realizing that the female was crossing." In her recorded statement to the officer, she said, "I started to cross, and I wasn't going very fast, but I didn't see them at all." "I wasn't in a hurry at all." No witness contradicted her.

Lompoc Unified School Dist. v. Superior Court (1993) 20 Cal.App.4th 1688, 1697-1698, in which a school district owed no duty to protect passing motorists from distractions, is beside the point. There is no evidence that Lux was distracted. Speculation that she could have been is insufficient to defeat summary judgment.

This case is unlike *Pedeferri v. Seidner Enterprises* (2013) 216 Cal.App.4th 359, in which a driver was distracted when dirt bikes that a vendor loaded into his pickup truck became loose. In *Pedeferri*, the vendor was not entitled to summary judgment because there was evidence the driver, "without braking, . . . took his eyes off the road to glance back over his left shoulder, and then his right," to check the dirt bikes in his truck bed after he heard them bouncing around, and "[a]s he did, [he] steered his truck . . . into [another vehicle]." (*Id.* at p. 363.) There is no evidence Lux was similarly distracted when she drove into Padilla-Lee.

B. The City's Motion for Summary Judgment

The Lees contend (1) the intersection was a dangerous condition of public property, (2) there is substantial evidence that

it was a cause of the collision, and (3) the City did not establish it is entitled to design or traffic device immunity. Like the trial court, we address only the second contention because it is dispositive.

The City presented evidence that, even assuming the intersection dangerously obstructed the view of southbound traffic, the obstruction was not a cause of the collision. For the same reasons discussed above, the Lees' evidence did not create a triable issue of fact regarding causation.

A public entity is liable for injury caused by a dangerous condition of its property if "the property was in a dangerous condition at the time of the injury," "the injury was proximately caused by the dangerous condition," "the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred," and either the condition was caused by an employee's negligent or wrongful act or omission or the entity had "notice of the dangerous condition [and] sufficient time . . . to protect against" it. (Gov. Code, § 835.) A public entity may be liable for a dangerous condition of public property, even when the immediate cause of injury is a motorist's negligent driving, if some physical characteristic of the property exposes its users to increased danger from third party negligence. (*Castro v. City of Thousand Oaks* (2015) 239 Cal.App.4th 1451, 1457-1458.) The plaintiffs need not prove that the condition of the roadway caused the negligent driving, but they must prove the roadway was a proximate cause of the harm. (*Cordova v. City of Los Angeles* (2015) 61 Cal.4th 1099, 1102-1103, 1111.)

Like the Mesters, the City met its initial burden to show the collision was not proximately caused by the condition of the intersection when it presented the testimony of Lux and Lopez.

The opinions of Fugger and Bailey that the intersection played no role were additional evidence negating causation.

The trial court did not abuse its discretion when it overruled the Lees' hearsay objection to Bailey's declaration about the standards set forth in certain traffic manuals and whether the intersection met them. (Evid. Code, § 801, subd. (b) [an expert may opine based on matters of a type reasonably relied on by experts in his or her field].)

To rebut the City's showing, the Lees relied primarily on the opinions of Moore and Droll and criticisms of the City's expert opinions. But, as discussed above, the Lees offered no evidence that Moore's and Droll's theories represented reality. There is no evidence that the condition of the intersection or placement of traffic devices diverted Lux's attention, caused her to accelerate at an unusually high rate of speed, reduced her stopping time, or otherwise brought about the collision.

This case is unlike *Cordova v. City of Los Angeles*, *supra*, 61 Cal.4th 1099, 1103-1104, in which the plaintiffs avoided summary judgment with evidence that their daughter's car struck a city's magnolia tree when another car knocked hers out of control, killing her and her passengers. There is no similar evidence that a feature of the City's roadway contributed to the Lees' harm.

Because we conclude there is no causation, we need not discuss the design and traffic device immunity.

DISPOSITION

The judgment is affirmed. Respondents shall recover costs on appeal.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Colleen K. Sterne, Judge

Superior Court County of Santa Barbara

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